

N6CQGOE1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

22 CR 396 (PKC)

5 Trial

6 BRIJESH GOEL

Defendant.

7 -----x

8 New York, N.Y.

9 June 12, 2023

9:35 a.m.

10 Before:

HON. P. KEVIN CASTEL,

11 District Judge

12 - and a jury -

13 APPEARANCES

14 DAMIAN WILLIAMS,

United States Attorney for the  
Southern District of New York

15 BY: JOSHUA A. NAFTALIS

SAMUEL P. ROTHSCCHILD

16 ANDREW M. THOMAS

Assistant United States Attorneys

17 FORD O'BRIEN LANDY LLP

Attorneys for Defendant

18 BY: ADAM C. FORD

19 ANJULA PRASAD

NICOLETTE BEUTHER

20 -and-

GIBSON, DUNN & CRUTCHER, LLP

21 Attorney for Defendant

22 BY: REED M. BRODSKY

23 Also Present: MATTHEW MAHAFFEY, FBI

MADELINE SONDERBY, Paralegal Specialist (USAO)

N6CQGOE1

(In open court; case called)

DEPUTY CLERK: For the government.

MR. NAFTALIS: Good morning, your Honor. Joshua Naftalis, Sam Rothschild, and Andrew Thomas for the government.

THE COURT: Good morning to you all.

DEPUTY CLERK: For the defendant.

MR. FORD: Good morning, your Honor. Adam Ford, Anjula Prasad, Reed Brodsky, and Nicolette Beuther on behalf of Mr. Goel.

THE COURT: Good morning to you all.

MS. PRASAD: Good morning, Judge.

THE COURT: First order of business is I wanted to address the medical records which I have reviewed, and will say, first off, they cover a period of visits from December 20, 2021 to February 2, 2023. And in July of 2022, the treating psychiatrist stated that the individual has a diagnosis of bipolar disorder NOS and cannabis use disorder in remission.

NOS is a well-known abbreviation for "not otherwise specified" and which is consistent with the records which refers to it as unspecified.

In the course of treatment, the doctor's notes indicate, and, in context, one would assume that it came from the patient. It says, literally says, "Taking openly" but I take that to mean "talking openly about insider trading and this investigation is causing him stress, and that the patient

N6CQGOE1

1 reports a friend who he looked up to as a mentor gave him  
2 information several years ago. He reports he was "-- it says  
3 "NW," I take that possibly" "new to finance and the information  
4 was non-specific."

5 That concludes what I covered from the records which  
6 appeared to me potentially of use to the defense and not  
7 otherwise invasive of the witness's right to confidentiality  
8 surrounding medical records. So that concludes that issue.

9 Now, with regard to the correspondence of recent days,  
10 I want to understand a few things about the chronology here  
11 with regard to when it was that the government -- and I know  
12 there's a chronology that was furnished by the defense. I've  
13 seen it, but I want to hear from the government what was the  
14 chronology on its efforts to secure a stipulation with regard  
15 to the text messages of Mr. Niranjana, specifically the review  
16 of his phone on June 2, 2022, and then the second review of his  
17 phone on June 10, 2022 after the purported events in a  
18 stairwell.

19 So what happened? How did you go about seeking to  
20 authenticate this or raise the issue of authentication or raise  
21 the issue of a stipulation? Give me the rundown on that, and  
22 I'm going to ask the defense whether they agree with that  
23 chronology.

24 MR. ROTHSCCHILD: Yes, your Honor.

25 So on May 28 of this year, we sent for the defense's

N6CQGOE1

1 consideration a proposed stipulation as to, among other things,  
2 the authenticity of particular WhatsApp messages between  
3 Mr. Niranjan and the defendant that we wished to offer into  
4 evidence at trial marked as Government Exhibits 200 through  
5 207. All of those ultimately derived from Government Exhibit  
6 253, which has been the subject of the recent papers. Those  
7 are messages, your Honor, that we intend to use affirmatively.  
8 They are not messages that were deleted.

9 THE COURT: All right. A question about that is, I  
10 read, and I think we've had this discussion about this subject  
11 before, that there was some offer by the government as to when  
12 it was going to disclose witnesses and exhibits. I don't think  
13 I ordered that, but I think the government volunteered that.  
14 Is that accurate and when was that by?

15 MR. ROTHSCHILD: So our exhibits were due on May 31.  
16 So we furnished this proposed stipulation before the exhibit  
17 list.

18 THE COURT: Was there an understanding to disclose  
19 witnesses?

20 MR. ROTHSCHILD: Yes, your Honor.

21 THE COURT: By when?

22 MR. ROTHSCHILD: Our witness list was due, I believe  
23 May 12, your Honor.

24 THE COURT: So let's take it back to May 12. How were  
25 you going to get these text messages into evidence?

N6CQGOE1

1 MR. ROTHSCCHILD: Your Honor, I think the answer to  
2 your question is that in retrospect, we ought to have put  
3 somebody on our witness list with respect to this topic. What  
4 I will say is we did not know the name of the individual or  
5 individuals --

6 THE COURT: No, I'm okay with that. You didn't know  
7 Tappeto at that point or Tappeto, is that it?

8 MR. ROTHSCCHILD: That's correct, your Honor. We  
9 didn't know which vendor the cooperator had used.

10 THE COURT: In that sense it makes it a little bit  
11 more puzzling; not less puzzling, but more puzzling. But okay.

12 And you had disclosed the June 2 output and the  
13 June 10 output at a much earlier point. When was that?

14 MR. ROTHSCCHILD: In August 2022 in our initial  
15 production of discovery.

16 THE COURT: And as I understand it -- and I'm just  
17 doing the first overview yet. I don't want you to argue the  
18 point. But I understand that the argument has been raised by  
19 the defendant that this is in the nature of expert testimony  
20 and expert disclosure need to have been made.

21 You were of the position that it is fact testimony,  
22 and not expert testimony, and no expert disclosure needed to be  
23 made, correct?

24 MR. ROTHSCCHILD: That's correct, your Honor.

25 THE COURT: All right. So the issues that I think I'm

N6CQGOE1

1 called upon to decide -- and I'm going to ask the defense to go  
2 over this territory; we will take a time out just to see if the  
3 judge has this framed correctly -- but the issues I'm being  
4 asked to decide are whether you can, may, whether you have  
5 leave to belatedly designate the witness and whether the  
6 witness is expert or lay.

7 Now, maybe you could take those questions in reverse  
8 order. Is the witness expert or lay, and can you belatedly  
9 designate, and that probably makes more sense because the  
10 standard would be different for an expert than it would be for  
11 a lay person.

12 Are those the issues that I am -- and then, of course,  
13 we have the subpoena issue. And on the subpoena issue, this is  
14 my takeaway from my reading yesterday, and at various hours I  
15 think three letters came in yesterday, but my understanding is  
16 the government took the position that the subpoena directed to  
17 Tappeto and his company called for production of a broad  
18 universe of text messages, including family messages, things  
19 that under no sense or no threat could be relevant to this  
20 case.

21 And the defense came back and said, not so. We are  
22 not seeking text messages. We are seeking instructions given  
23 to Tappeto, and we are seeking any reports or analyses done by  
24 Tappeto or his firm or maybe given to Tappeto and his firm by  
25 somebody else.

N6CQGOE1

1           And then I think the next thing I read, if I have this  
2           correctly, is that the government was saying, oh, we did not  
3           quite understand that. Nobody is at fault here. This is  
4           happening at lightening speed. We didn't understand that, and  
5           that we may be able to work out any issue relating to the scope  
6           of the subpoena. That's the bid and the ask as I remember it  
7           on the subpoena issue.

8           Am I leaving something material out of that  
9           chronology?

10           MR. ROTHSCCHILD: No, your Honor. I'm not sure it was  
11           so much that the government didn't understand what the subpoena  
12           was requesting. I think here the phrase "report," which they  
13           asked for the June 2 report, the June 10 report, is a term of  
14           art that in fact means the content of the report.

15           THE COURT: So, again, this is neutral of any  
16           criticism here. It's just you maybe, quite reasonably, thought  
17           it included the text, and it was clarified that it didn't  
18           include the text. Is that about right?

19           MR. ROTHSCCHILD: Fair enough, your Honor.

20           THE COURT: And have you come to some understanding on  
21           the scope of the Rule 17 subpoena?

22           MR. ROTHSCCHILD: The parties have not conferred on  
23           that.

24           THE COURT: So now let me turn to the defense, and so  
25           far we are not arguing the issues. We're arguing the framing

N6CQGOE1

1 of the issues. Go ahead, Mr. Brodsky.

2 MR. BRODSKY: Your Honor, I would add to the framing  
3 of the issues that the stipulation that we focused on was  
4 provided to us, and it's Exhibit 1 to our June 8 letter, and it  
5 does not ask for authenticity of any particular text messages,  
6 but rather states that they're asking us to stipulate that a  
7 consultant on June 2 extracted data from Mr. Niranjan's  
8 cellphone, then a consultant extracted data on June 10, and  
9 then marked a marked Exhibit 216 which they called a  
10 discrepancy report. And that --

11 THE COURT: The discrepancy report is now off the  
12 table. The government isn't going to offer, right?

13 MR. BRODSKY: They replaced the discrepancy report  
14 with the same thing except now what they did, Mr. Tappeto,  
15 apparently will take the discrepancy report, they will focus on  
16 the first 13 messages which they care about, which we wrote  
17 that that's what they cared about.

18 It appears to be that they eliminated other messages,  
19 and it's still fundamentally the same thing. It is a  
20 comparison. So what I would say to it, it's not about  
21 authenticity of text messages. It is rather about the use of a  
22 particular technology and about the comparison.

23 THE COURT: Let me pause. I'm going to ask a  
24 question, and I'm going to let you finish, Mr. Brodsky. So  
25 when I interrupt, hold your thought and get back to it.

N6CQGOE1

1 But when I sit here reading this, I understand there's  
2 such a thing as, I don't know if it's pronounced Cellebrite or  
3 Cellebrite, however it's pronounced. It's a piece of software,  
4 and it's commonly used.

5 But here is the question I have: If you had time and  
6 paralegal muscle, could not one look at what was on the phone  
7 on June 2 and then look at what was on the phone on June 10 and  
8 say the following text messages were not there on June 10 that  
9 were there on June 2?

10 MR. BRODSKY: The only person who can do that today is  
11 at TransPerfect. The defense cannot do it even though we have  
12 two exhibits which contain over 80,000 messages, and even if I  
13 had the 40 or so summer associates at Gibson Dunn working  
14 overtime --

15 THE COURT: Because you don't have the phones.

16 MR. BRODSKY: Because we're told the technology  
17 doesn't -- you cannot compare the two without having the  
18 metadata and without knowing where the file system was. So,  
19 for example --

20 THE COURT: Okay.

21 MR. BRODSKY: So that's what we're told because we  
22 don't have the phones.

23 THE COURT: All right. Okay. Mr. Brodsky, could I  
24 impose on you to just let me let the government respond on that  
25 simple point?

N6CQGOE1

1           Could not a team of paralegals with the two phones --  
2           you can stay at the podium -- with the two phones in front of  
3           them simply do a comparison?

4           MR. ROTHSCCHILD: So, your Honor, yes -- the answer is  
5           yes, a comparison of the two --

6           THE COURT: June 2 versus June 10.

7           MR. ROTHSCCHILD: Correct, your Honor. The  
8           spreadsheets that were produced back in August of 2022, those  
9           can absolutely be compared. And I was rising, your Honor, just  
10          to note two -- I know we're just getting the facts straight  
11          here. I know we're not arguing.

12          The stipulation Mr. Brodsky refers to is a different  
13          stipulation than the one I was referring to. It was sent the  
14          next day, and Mr. Brodsky is correct it's reflected in the  
15          discrepancy report, and your Honor is quite right, that's off  
16          the table. But I wanted to note we are not intending to call  
17          Mr. Tappeto to offer any testimony about comparison about what  
18          was on the phone on June 2 and what was on the phone on  
19          June 10.

20          THE COURT: Oh, then I'm lost. So what --

21          MR. ROTHSCCHILD: Your Honor, we anticipate Mr. Tappeto  
22          to testify about collecting data from the phone on June 2,  
23          producing a report of messages on June 2. We are going to ask  
24          him to take Government Exhibit 253, which is what was produced  
25          to us by Morvillo and what we produced to the defense in

N6CQGOE1

1 discovery, and to confirm that Government Exhibit 253 comes  
2 from or is data that's in his June 2 report that he made of the  
3 phone.

4 And we intend to do the same thing with Government  
5 Exhibit 254 and say that that data is a subset of data from the  
6 June 10 report that he created.

7 We will then call an agent from the FBI --

8 THE COURT: Okay. And the agent does the comparison.

9 MR. ROTHSCILD: Correct, your Honor.

10 THE COURT: Thank you.

11 Go ahead, Mr. Brodsky.

12 MR. BRODSKY: Yes, your Honor. Respectfully, I  
13 compliment the ingenuity and the creativity, but it doesn't get  
14 around the fundamental problem of what the government has put  
15 themselves in the position after outsourcing.

16 So just to frame the issues, I agree, your Honor --  
17 and we're happy to argue the issues -- but whether or not there  
18 was a belated designation I think has been stipulated. Whether  
19 it's expert or lay I think is in dispute, and I think there is  
20 a question about that.

21 I would an add to that, even if whether they're expert  
22 or lay, the third issue would be the sword-shield issue. Can  
23 you call somebody who extracted data, whether they're expert or  
24 lay, on one date using the Cellebrite technology of a  
25 particular method.

N6CQGOE1

1           There are multiple methods to do it. And can you do  
2           it on June 10, and then call that person but shield them from  
3           answering questions about what instructions they received, what  
4           reports they ran, what statements Mr. Niranjana made or what  
5           counsel made on his behalf, what they advocated or didn't  
6           advocate for him.

7           THE COURT: Well, that in my mind -- and this is where  
8           framing is the right way to be discussing this. In my mind,  
9           that's a subpoena issue. You want to know what did the  
10          Morvillo firm tell Tappeto, what were his instructions, what  
11          limitations, if any, were placed on him.

12          MR. BRODSKY: Yes, your Honor. And I would add to  
13          that, on June 2 they chose one of three methods to extract data  
14          from the phone. Cellebrite has three. The most narrow of the  
15          three is the one they chose.

16          I would add to that that even the narrow method that  
17          they chose allows you to extract from the phone whether  
18          information was deleted but recovered, or found in a deleted  
19          section of the phone, or otherwise attempted to be deleted.  
20          That would all, of course, be something had the FBI had the  
21          phone, we'd have access to. And that we think we would be  
22          entitled to that information in cross-examining Mr. Tappeto.

23          The final and fourth issue is even assuming we get  
24          these reports, our argument, your Honor, is without the access  
25          to the actual extraction and doing the challenging and the

N6CQGOE1

1 testing, we believe the probative value, which is very minimal,  
2 is outweighed by the unfair prejudice.

3 THE COURT: I think that's a good job of framing, and  
4 I think we have the issues framed, and I think I was right to  
5 amend my response. I think the first issue, is it expert or is  
6 it lay, because that goes to whether it be appropriate to  
7 exercise my discretion or how to exercise it.

8 So I'm going to give you a choice, Mr. Brodsky, to go  
9 first or second on that issue.

10 MR. BRODSKY: I'm happy -- since I'm standing, I'm  
11 happy to go first, your Honor.

12 THE COURT: Okay.

13 MR. BRODSKY: What I would say to it is I would refer  
14 to the case *United States v. Ray* case of Judge Liman.

15 THE COURT: I've read it.

16 MR. BRODSKY: I think Judge Liman does a very good job  
17 of essentially saying it is a close question. There are  
18 courts, we've cited to your Honor, not in this district, which  
19 have definitely said it's expert testimony.

20 I think if you look at the cases, the trend, is that  
21 it is appropriate for specialized knowledge outside the average  
22 lay person's understanding. I think in today's times,  
23 especially the ones we live in, when people hear extraction by  
24 a forensic digital examiner, they think, oh, that person has  
25 specialized knowledge; that person has something that they know

N6CQGOE1

1 that I don't know.

2 I think it's fairly apparent that if you ask the  
3 average person, do you know how to extract data from the phone?  
4 What are the different methodologies? What are the limitations  
5 what are the flaws? What are the deficiencies? What are the  
6 different sections of a phone? I think most people don't know  
7 that. I certainly don't. I had to read up on it over the last  
8 few days. But what Judge Liman said was it's a close question,  
9 and the *Marsh* case which the government cites is very different  
10 than here because in the *Marsh* case --

11 THE COURT: He's an FBI agent.

12 MR. BRODSKY: An FBI agent, and they confirmed the  
13 actual data from the phone. They looked at all the messages,  
14 not just the ones that were purportedly deleted. The  
15 government doesn't surmount this problem by having somebody  
16 say, oh, I read the report and I can identify those messages,  
17 and I called Mr. Niranjana. And he says, oh yeah, those  
18 messages aren't on my phone now.

19 That is far different than what happened in *Marsh*.  
20 It's far different than what happened in the SEC case that they  
21 rely on, which relies on *Marsh*, and the government had choices  
22 here. They decided not to take possession of Mr. Niranjana's  
23 phone. They made the choice to allow a third party under  
24 Mr. Niranjana's control and direction to access and extract and  
25 decide what to do with the phone.

N6CQGOE1

1           The reason it's expert knowledge is fairly simple. It  
2 requires specialized knowledge. Even if they try to narrow his  
3 testimony and say we're just going to ask him what he took out  
4 of the phone, it's still beyond the knowledge of an average lay  
5 person.

6           So I think Judge Liman appropriately said in that  
7 case, regardless of expert or not, even if it's a close line,  
8 here are all the difference disclosures you're going to be  
9 required to make well in advance of trial.

10          THE COURT: Of course, Judge Liman was clear he wasn't  
11 deciding the question of whether it was expert or fact  
12 testimony. Disclosures in that concept were kind of the legal  
13 version of chicken soup: What's the harm, make the  
14 disclosures, I'll decide this down the road, and noted it was a  
15 close question.

16          MR. BRODSKY: That's right, your Honor. That's why we  
17 would turn to *Daniels* and *Belosi*, which are court cases that  
18 said, yes, the process here is beyond the ken of a lay jury,  
19 and, you know, *United States v. Belosi* was the Eastern District  
20 of New York, *United States v. Daniels*, of course, is a Southern  
21 District of California. None of the government cases I think  
22 do much other than say those are situations where the agents  
23 themselves had the data, extracted the data, and provided  
24 information presumably about how they did it to the defense.  
25 We haven't been able to find a single case, your Honor, and

N6CQGOE1

1 they don't cite any, in which this issue has come up.

2 THE COURT: Let me hear from the government. Thank  
3 you.

4 MR. THOMAS: Judge, I will at least begin on this  
5 topic. Mr. Rothschild will surely pop up at some point to  
6 assist. I think the basic issue is also a framing issue here,  
7 which is what is it we intend to elicit from the witness by way  
8 of evidence. It is possible one could put Mr. Tappeto on the  
9 stand and ask him all manner of questions about the operation  
10 of Cellebrite forensic technologies. We aren't doing that.

11 What Mr. Tappeto will say essentially to answer the  
12 question do these messages come from that device on a specific  
13 day, and he'll say yes. And if explored on cross-examination,  
14 the answer to why is he'll say, "I used a piece of software to  
15 take the messages out." That's a subject that every juror who  
16 has a cellphone, which is every juror, will readily understand,  
17 they could be understood, and that the weight of which, which  
18 is essentially the challenge Mr. Brodsky is making, could be  
19 challenged to whatever degree he sees fit on cross-examination.

20 Are there different techniques? Sure. Ask the  
21 witness; you could. But the availability of different  
22 techniques doesn't make the testimony that he has personal  
23 knowledge that these messages derived from that phone on one  
24 day any more expert than it would be for any other witness.

25 The argument about it being an FBI agent or not an FBI

N6CQGOE1

1 agent really is neither here nor there on the expert issue.  
2 It's of no moment whatsoever who employs or pays the witness  
3 who has the personal knowledge to make them an expert or not.  
4 The gravamen of the issue is the testimony.

5 Mr. Tappeto will not be offering opinion testimony.  
6 He'll be offering personal knowledge testimony, which 901 says  
7 is the basis for authenticity to say these messages came from  
8 that phone on that date, and it's in fact I think now pretty  
9 clear that the date is really the crux of the dispute here.  
10 There's not a serious dispute that these messages weren't on  
11 the phone or they were not messages between the defendant and  
12 Mr. Niranjana. It's just were they on the phone on that day,  
13 and I think that draws special focus to the lay nature of the  
14 testimony because it's not a theoretical digital metaphysics  
15 dispute about what kind of file this is or what it means. It's  
16 just asking Mr. Tappeto were these messages on the phone on the  
17 2nd, were these other messages on the phone on the 10th. And  
18 the Court rightly pointed out, an agent here compared the two  
19 files, and will say: Here are 13 messages in file one that  
20 cannot be found in file two.

21 Now, the degree to which there were other sets of data  
22 or limitations to the sample set for that comparison fruitful  
23 grounds for cross-examination, but the essence of the testimony  
24 is just did the messages come from the phone, and did these  
25 messages come from the same phone on the second day?

N6CQGOE1

1 THE COURT: All right. Anything else on the expert  
2 issue?

3 MR. THOMAS: No, your Honor, other than to say I think  
4 *Marsh*, while being a different set of facts, makes plain that  
5 this kind of thing can be within the ken of the average person,  
6 which now years after *Marsh* in a world of cellphones is more  
7 true than it was then.

8 THE COURT: At this point, I am ready to rule on the  
9 expert versus lay testimony situation, and I've looked at the  
10 *Belosi* case, the *Daniels* case, the *Ray* case, as well as *Marsh*,  
11 *Chavez* or *Lopez* -- and I'm trying to discern my own  
12 scribbling -- the Ninth Circuit case, which I think is *Berry* if  
13 my scribble is correct.

14 And I think the *Marsh* decision, which is a summary  
15 order, was very close to point and remarkably thorough in its  
16 description of the issue. It was the use by a special agent of  
17 the FBI of the Cellebrite universal forensic extraction device  
18 to download and review the contents of two cellular phones  
19 belonging to *Marsh's* girlfriend.

20 And the argument on appeal was that was the improper  
21 elicitation of expert opinion testimony, and the Court notes  
22 that the federal rules allow the admission of fact testimony so  
23 long as the witness has personal knowledge, while opinion  
24 testimony can only be presented either by a lay or expert  
25 witness, "a witness's specialized knowledge" -- this is quoting

N6CQGOE1

1 the *Rigas* case which was a reported case of the Second Circuit  
2 -- "or the fact that he was chosen to carry out an  
3 investigation because of this knowledge, does not render his  
4 testimony 'expert' as long as it was based on his  
5 'investigation and reflected his investigatory findings and  
6 conclusions, and was not rooted exclusively in his  
7 expertise..." And the special agent in that case explained  
8 his training in Cellebrite technology to retrieve text and  
9 other data from a cellphone, described how he used Cellebrite  
10 to do so, and testified that he confirmed the results by  
11 checking the message on the phone itself.

12 "He did not purport to render an opinion based on the  
13 application of specialized knowledge," says the Court, "to a  
14 particular set of facts, nor did his testimony turn on or  
15 require a technical understanding of the programming or  
16 internal mechanics of the technology," and, therefore, the  
17 Court affirmed the district court's evidentiary ruling in  
18 *United States v. Marsh*, 568 F.App'x 15.

19 Now, subsequent to that, the Fourth Circuit in *Chavez*  
20 *Lopez* had a Cellebrite case and cited *Marsh* and came out the  
21 same way, again, in an unreported decision of the Fourth  
22 Circuit. And I thought Judge Liman got it right, did it right  
23 in *Ray*. There were many issues other than cellphone extraction  
24 including interpretation of metadata, analysis of images from  
25 laptops, external storage drives and cellphones. It included

N6CQGOE1

1 an issue here. And Judge Liman decided that he didn't need to  
2 decide whether it was expert or lay. It was a close question  
3 on the facts presented to him, and so he required an expert  
4 disclosure leaving the issue for another day.

5 So I conclude on balance that this testimony as  
6 described to me on the record is more akin to fact testimony  
7 rather than expert and, therefore, an expert disclosure was not  
8 required. There remains the question of whether or not the  
9 government should be given leave to call this witness though  
10 it's after the date by which it said it would disclose  
11 witnesses.

12 Is there anything further, Mr. Brodsky, you want to  
13 say on that issue?

14 MR. BRODSKY: No, your Honor, I just would note -- and  
15 I know you know this, your Honor, it puts the defense in a  
16 difficult position, I would just say, because I know the  
17 government is going to call Mr. Tappeto, and he can say, "I  
18 just did this to this phone." If we cross-examine effectively,  
19 we run a very substantial risk of turning him into an expert,  
20 and I understand your Honor knows that, and it's a challenge  
21 that we have on the defense. I'm just open with your Honor  
22 about it.

23 THE COURT: I know what you're saying, and I have to  
24 do what a judge does, is listen to the question, listen to the  
25 testimony, and rule at that time.

N6CQGOE1

1           It seems to me that what happened here was suboptimal  
2           and should not have happened. It did happen. And I think the  
3           interests of justice are served by allowing the testimony in,  
4           and it sounds like it will be -- the direct will be brief.  
5           We'll see what happens with the cross.

6           MR. BRODSKY: Your Honor, if I may be heard just on  
7           the witness list. The government has had this discrepancy  
8           report, because they gave it to us over a year ago. They asked  
9           for these deadlines. You so ordered the deadlines. Deadlines  
10          are deadlines. And they are weeks over the deadline. They  
11          don't have good cause. What they say is it doesn't cause us  
12          unfair prejudice.

13          THE COURT: Well, this is what I invited you to argue  
14          just a second ago.

15          MR. BRODSKY: Well, no, I thought we were arguing the  
16          expert opinion.

17          THE COURT: No. I ruled on that.

18          MR. BRODSKY: Right.

19          THE COURT: Then I said anything you want to say on  
20          the timing.

21          MR. BRODSKY: I apologize, your Honor.

22          THE COURT: That's what I've asked you, and now I've  
23          ruled on the timing, and I'm going to allow it because I  
24          believe the good cause, it's in the interest of justice and  
25          because of the narrow frame of the witness's testimony the fact

N6CQGOE1

1 that the two extraction reports were produced in August of  
2 2022. I understand, you know, you say, well, this is good  
3 news, it wasn't -- they didn't designate a witness. I'm not  
4 hearing argument. I've ruled --

5 MR. BRODSKY: Sorry, your Honor.

6 THE COURT: -- on the timing issue. I gave you  
7 opportunity to argue on the timing issue. We're not having a  
8 debate on this or anything in this.

9 I will say this, that I will also consider the 403  
10 issue that you did raise. You raised 403. So far it looks to  
11 me like the probative value is not substantially outweighed by  
12 the danger of unfair prejudice. I reserve the right to change  
13 my mind on that based on what I learn in the course of the  
14 trial.

15 This, of course, still leaves open the subpoena issue.  
16 I will frame this a little differently because I have a  
17 viewpoint in mind. Why should I not order that any written  
18 embodiment of a communication between Tappeto and the Morvillo  
19 firm be produced pursuant to that subpoena, at least that part  
20 of the subpoena ought to be enforced?

21 MR. THOMAS: Judge, I think as long as that's with  
22 respect to these two reports and not other engagements he may  
23 have had with Morvillo, the government has no objection.

24 THE COURT: Well, it would be engagements relating to  
25 their client here, Mr. Niranjana. And because, you know, I

N6CQGOE1

1 don't know what's in there. I don't know what they might have  
2 said globally in engaging Tappeto that could reflect on this  
3 issue. It could be broad enough that it would be an  
4 instruction whatever you do, don't look at the X. You know,  
5 and that's for this project and three other projects, whatever  
6 you do, don't consider X. It seems to me that's fair game to  
7 know about.

8 MR. THOMAS: Your Honor, we take the Court's point.

9 THE COURT: Okay. Mr. Brodsky, I just issued the  
10 government an order to show cause. They've responded.  
11 Anything you want to say?

12 MR. BRODSKY: No, I appreciate it, your Honor, and I  
13 thank you for that.

14 And just for point of clarity, would that include --  
15 again, I don't want reports of content, but would that include  
16 if they send a report that says, you know, here's the content,  
17 here are the categories, I'd like to know if, for example,  
18 without having the actual messages, are there things in the  
19 unrecovered or deleted, there are all sorts of categories when  
20 they extract from a phone.

21 THE COURT: In other words, were there other  
22 categories, so we know extracted, not extracted, and you're  
23 saying there could be a third or a fourth category.

24 MR. BRODSKY: Well, within the extraction, apparently  
25 Mr. Tappeto told us there are like 20 or 30 categories of

N6CQGOE1

1 information: Unrecovered, recovered but in deleted, you know,  
2 various sections.

3 THE COURT: Why shouldn't that be produced? Let me  
4 hear from the government.

5 MR. THOMAS: Well, your Honor, the -- if Mr. Brodsky  
6 is envisioning some kind of cover page that says 23 files  
7 deleted, 52 files unrecoverable, no objection to that being  
8 produced. But as the Court knows, those -- the way these  
9 typically work is there's a hyperlink then to the 53 messages,  
10 and those messages may be --

11 THE COURT: The content of the messages is that it's  
12 beyond the scope of the subpoena. That I've said. But  
13 otherwise it seems to me that which bears on the work he did  
14 and what he found ought to be fair game. So if he had, again,  
15 deleted, non-deleted and maybe deleted comes in three flavors,  
16 I think the defense is entitled to know that. And if  
17 non-deleted comes in four flavors, I think the defense is  
18 entitled to know that. I have no idea what the flavors are,  
19 but...

20 MR. THOMAS: Your Honor, we once again take the  
21 Court's point, but just to make sure we effectuate the Court's  
22 intention.

23 THE COURT: Yes.

24 MR. THOMAS: The idea is for any historical reports of  
25 that nature, not for Mr. Tappeto to undertake to generate new

N6CQGOE1

1 work.

2 THE COURT: No. This is production of that -- what I  
3 believe the defense is entitled to know is, was there anything  
4 in the interaction which infected the authenticity of what the  
5 witness did. And if there is, the defense wants to know it,  
6 and I want to know it. I think that's absolutely fair game.

7 MR. THOMAS: Yes, your Honor.

8 THE COURT: So I'm waiting on our jury. Is our jury  
9 ready.

10 DEPUTY CLERK: I'm waiting.

11 THE COURT: We're still waiting?

12 DEPUTY CLERK: No, I'm waiting on you.

13 THE COURT: We'll defer on the transcript issue to  
14 another time. We've done quite enough. Thank you.

15 I'm going to have marked right now and hand out to  
16 counsel what I call an aid to memory, and we will mark it as  
17 Court Exhibit Number 1. And what I mean by an aid to memory,  
18 it will at some point in this process be given out to jurors,  
19 and so that when they go through the questioning, I can say,  
20 well, what did you have your hand up on? Question 13 or 12 or  
21 11? Or if there's a juror who hasn't been spoken to, and I  
22 need to make sure that they understand what I was asking, they  
23 may reference that.

24 It also has the schedule -- do you have another one  
25 for Mr. Brodsky, please?

N6CQGOE1

1 And that's all it is. It's not a questionnaire.  
2 Nobody fills it out. And it by no means is -- we don't have to  
3 give one to everybody. Two to a side is fine. It is by no  
4 means the voir dire. The voir dire will include many followup  
5 questions that do not appear on this document, but it is a  
6 start, so...

7 DEPUTY CLERK: Ten minutes, Judge.

8 THE COURT: So now let's turn to transcripts while  
9 we're dealing with waiting for our jurors.

10 So on the rule of completeness, this is actually  
11 territory that is often traveled in criminal prosecutions where  
12 there's a transcript, and the government says we want to offer  
13 these statements of the adverse party as evidence against the  
14 adverse party, and the rules of evidence allow us to do that.  
15 There are other things in the transcript that might be useful  
16 or helpful to the defendant. And, of course, they're entitled  
17 to know the entirety of what's in the transcript.

18 But the law of evidence does not mean that the fact  
19 that the government is using a portion of a recording, that the  
20 defense may offer other portions of the recording that are  
21 helpful. The rule of completeness does require that where in  
22 fairness, it's necessary to offer at the same time -- or where  
23 in fairness, another portion of the transcript should be  
24 offered at the same time so as to not leave a misleading  
25 impression.

N6CQGOE1

1           So I will give you an example. There is a  
2 conversation about paying money for the thing, and there's  
3 repeated conversation about "the thing." Elsewhere in the  
4 transcript it's clear that the thing is a red Corvette  
5 convertible. The defense can compel and I can compel, and I  
6 should compel, the government to offer that portion at the same  
7 time. But what it does not mean is that if there are  
8 exculpatory statements also in the transcript, that they get to  
9 be offered under the rule of completeness.

10           Now, I took from the correspondence before me that  
11 there are ongoing discussions on the application of the rule of  
12 completeness. So, therefore, I'm going to hands off that one  
13 for the time being and allow you to continue with your  
14 discussions on that rather than my trying to referee something  
15 that isn't ripe for refereeing.

16           Now, there is a second issue which I understand  
17 Niranjana reviewed, if I'm correct about this, Hindi portions of  
18 the tapes and made handwritten markings on the Hindi portions  
19 of the translations. Do I have that wrong? Do I have that  
20 right?

21           MR. NAFTALIS: Your Honor, it's both the English and  
22 Hindi.

23           THE COURT: Both English and Hindi. All right.

24           Now, the government has a nifty stipulation which says  
25 we're going to give you drafts of the tapes, of the transcripts

N6CQGOE1

1 of the tapes, and you swear on your youngest child that you  
2 will never refer to them in any way, shape or form because  
3 they're only draft. Fine.

4 But they also live in a different world, and the world  
5 that they live in is they're 3500 material and possibly *Giglio*  
6 material. Now, I have no idea, but it would seem to me that if  
7 the witness in his own handwriting, his own handwriting is  
8 injecting a biased and baseless version of what's on the tape  
9 writing it in, making up stuff that's not there. I'm not  
10 saying this happened. I'm just trying to analyze an issue as  
11 the judge.

12 If that happened, I don't see why the defense can't  
13 use that in cross-examination despite the stipulation because  
14 that existed as a transcript subject to the stipulation but it  
15 also existed as 3500/*Giglio* material. That's how I approach  
16 this, and I put this out here, and I give both sides the  
17 opportunity to tell me why I'm wrong.

18 MR. NAFTALIS: Your Honor, we agree that when  
19 Mr. Niranjan made edits on the drafts, that's 3500 *Giglio*,  
20 which is why we turned it over, but it's very common for a  
21 participant in a conversation, whether a wiretap or consensual  
22 recording, to listen and try to confirm. And in this case the  
23 drafts that were initially prepared were prepared days after  
24 the recording to get ready to charge the case; not for trial.  
25 And we are not using Mr. Niranjan as the person to authenticate

N6CQGOE1

1 the transcript.

2 We're calling an independent court certified  
3 translator. So what we think they're trying to do is not to  
4 impeach the transcript that's coming in. It's to impeach  
5 Mr. Niranjan in some way about something that is really outside  
6 his testimony. So the idea that he was injecting bias, we  
7 understand it could be proper ground for cross-examination.

8 The fact that these may be difficult to hear is what  
9 it is, but the idea that there is going to be competing  
10 transcripts flying around, I think is meant to effectively  
11 cross-examine the court certified interpreter. And sort of  
12 stepping back, what we don't quite understand if the defense  
13 wants the entire transcript to come in, they're presumably not  
14 challenging the authenticity or accuracy of them. We don't  
15 quite understand what the relevance is of cross-examining  
16 Mr. Niranjan.

17 THE COURT: Well, we're going to find out.

18 MR. NAFTALIS: Other than to effectively say the  
19 transcripts aren't really accurate because over a period of  
20 trial preparation, they evolved, which, as your honor knows,  
21 happens all the time when you are getting ready for trial.

22 That's the purpose, to step back, of the stipulation,  
23 which is what the Eastern District cases say is: Listen, we're  
24 going to give them to you early, but you can't just then show  
25 up and say, aha, some words came and went.

N6CQGOE1

1 THE COURT: No, I fully agree with that. But what  
2 changes the dimension is that it's in the hand of the witness,  
3 and we're talking about cross-examination of the witness. I  
4 want to -- I'm going to let Mr. Brodsky or one of his  
5 colleagues just without -- I'm not asking for a full preview of  
6 the cross-examination, but on what areas where you think it's  
7 permissible for you to use the transcript with Niranjana.

8 MR. BRODSKY: Your Honor, we agree with your analysis  
9 and comments, and, that is, if Mr. Niranjana made statements in  
10 a draft transcript in his handwriting days after recorded  
11 conversation which he participated and which he had access to  
12 the recording, because he did, and he made, you know,  
13 hypothetically, let's say -- I'm not saying this is what he  
14 did, but let's say hypothetically he made something up that's  
15 not there or let's say he said something that was just so  
16 untrue, then I think we're entitled to cross-examine him  
17 regarding his credibility.

18 We don't know what Ms. Shah, that's a totally separate  
19 issue. We don't believe the stipulation covers Mr. Niranjana's  
20 3500 material with his comments.

21 THE COURT: I think what I'm inclined to do in  
22 addition to allow you to elicit testimony bearing on  
23 Mr. Niranjana's credibility, what I'm prepared to do is before  
24 or when you launch into this area of cross-examination, have an  
25 instruction to the jury. I've allowed this cross-examination

N6CQGOE1

1 not on -- this is not on the accuracy of the transcripts. This  
2 is on whether there is anything in relation to Mr. Niranjana's  
3 handwritten comments on a draft that should bear on his  
4 credibility and that's why I'm allowing this cross-examination  
5 and for no other purpose.

6 What do you think of that, Mr. Brodsky.

7 MR. BRODSKY: One second, your Honor.

8 (Pause)

9 MR. BRODSKY: That's fine, your Honor.

10 THE COURT: All right. And what's the government's  
11 position? Beyond you can't do any of this because of the  
12 stipulation.

13 MR. NAFTALIS: Your Honor, final instruction, we'll  
14 see how the cross-examination develops, but --

15 THE COURT: I think what I'm going to ask is if the  
16 government could take a look at this transcript of today and  
17 work with Mr. Brodsky on something nice and clean, okay, and  
18 acceptable to both sides.

19 MR. NAFTALIS: Yes, your Honor.

20 THE COURT: With that, I'm going to luxuriate for a  
21 few minutes before the jury is ready. We are in recess.

22 (Continued on next page)

N6C6GOE2

Opening - Thomas

1 (Voir dire occurred)

2 THE COURT: Who will be opening for the government?

3 MR. THOMAS: I will, your Honor.

4 (Jury present)

5 THE COURT: Please be seated. I understand Mr. Thomas  
6 will be delivering an opening statement for the government.  
7 Whenever you're ready, sir.

8 MR. THOMAS: Thank you, your Honor.

9 About one year ago in an apartment building just  
10 blocks from where we are right now, this man, Brijesh Goel,  
11 huddled in a stairwell with his friend destroying evidence.  
12 Together, Goel and his friend scrolled through his friend's  
13 phone, selecting messages to delete.

14 Why did Goel do that? So he could erase evidence of  
15 the other crime he had committed: A criminal insider trading  
16 scheme. A scheme where Goel took information about big  
17 business deals from Goldman Sachs, his employer, and shared  
18 that information with his friend for stock trades, a scheme  
19 where Goel shared that inside information six times. Six  
20 times. So that he and his friend could make an illegal profit  
21 in the stock market.

22 That day when the defendant was in the stairwell  
23 deleting messages, he was doing that because he was afraid that  
24 he might have been caught. See, just two weeks earlier, the  
25 FBI knocked on his door, visited Goel, and asked him about

N6C6GOE2

Opening - Thomas

1 stock trading. Goel lied to those agents, to hide what he had  
2 done, and now in the stairwell, as he and his friend clicked  
3 through and deleted messages, they deleted the ones that would  
4 show their trading, and it was because Goel hoped to erase  
5 anything, anything, that might reveal what he had done, but it  
6 did not work. The evidence was there whether Goel tried to  
7 delete it or not. And those messages, the very ones that he  
8 tried to destroy in that stairwell, only confirmed what you  
9 will learn from the proof at this trial: Goel stole  
10 confidential information and used it as part of an insider  
11 trading scheme. And that is why we are here today.

12 Goel has been charged with insider trading, and he's  
13 been charged with obstruction of justice for destroying the  
14 evidence of his scheme.

15 So some background on how we got here.

16 In 2017 and 2018, Goel worked at an investment bank,  
17 Goldman Sachs. Investment banks like Goldman Sachs assist in  
18 mergers and acquisition, sometimes called M&A, when one company  
19 buys another or two companies consolidate. As part of his job  
20 at Goldman, Goel received memos – lengthy, detailed writeups  
21 about those deals. Those memos included important, sensitive,  
22 and secret information, like the names of the companies that  
23 might be planning to merge, information about how much one  
24 company might be willing to pay to buy another, projections  
25 about when a deal like that might happen.

N6C6GOE2

Opening - Thomas

1           Those details, the who, the when, the what price,  
2           those were details the average investor did not have. They  
3           were secret, and Goldman Sachs treated those memos as highly  
4           confidential. They even stamped them on every page with the  
5           words "internal use only." But in 2017, Goel decided to betray  
6           Goldman Sachs, and to use the "internal use only" memos, the  
7           inside information, for himself.

8           Goel decided to take confidential information about  
9           those M&A deals that he learned from his job and use that  
10          information illegally by trading in the stock market.

11          To put his plan into action, however, Goel needed  
12          help. Specifically, he needed an account that was secret from  
13          his bosses. That's because Goldman Sachs monitors its  
14          employees' accounts to prevent improper trading. That's when  
15          Goel turned to his close friend Akshay Niranjana. Niranjana  
16          worked at a different bank, and that bank had similar rules,  
17          but Goel's friend Niranjana decided to already break those  
18          rules.

19          Niranjana had his own brother create a brokerage  
20          account, and Niranjana used that account for his own stock  
21          trades. That meant the defendant had secret inside information  
22          from Goldman Sachs, and the defendant's friend had an account  
23          set up for secret trading. And so Goel and his friend worked  
24          out an arrangement to help them both.

25          Goel would give Niranjana stock tips. Niranjana would

N6C6GOE2

Opening - Thomas

1 make those trades in the account that he secretly controlled.  
2 And if the trades made money, the men would agree they would  
3 split the profits.

4 Beginning in 2017, that is what happened. In  
5 February, Goel gave his friend a tip, and his friend traded. A  
6 few months later in April, Goel gave his friend another tip,  
7 and his friend traded again. A few months after that, in  
8 September, Goel gave his friends still another tip, and the  
9 friend traded yet again. In 2017, in 2018, Goel and Niranjana  
10 made lots of the trades in this way. You will learn of six  
11 times these stock trades were based on information stolen from  
12 the Goldman Sachs memos. Six times. Six times Goel stole  
13 secret information from work, and tipped his good friend by  
14 telling him which securities to buy for the secret account.  
15 And each of those six times, Niranjana used Goel's tips to  
16 trade.

17 Some of those trades turned a decent profit, some  
18 didn't. But each time Goel knew where to place their bets  
19 because Goel knew something no one else knew: He knew that  
20 inside information. So unlike the average investor, Goel knew  
21 exactly which pitches to swing at.

22 One trade they made with that secret information  
23 turned into a home run. Goel had obtained a memo at Goldman  
24 about a billion-dollar takeover of a company called  
25 Calgon Carbon. Within hours, he told Niranjana about Calgon.

N6C6GOE2

Opening - Thomas

1 With this one, he said, make sure you don't miss out. And  
2 within days, Niranjana made \$53,000 in trades in that secret  
3 account. When the Calgon deal happened, the stock shot up, and  
4 Goel and his friend turned \$53,000 into \$300,000 - nearly a  
5 600 percent return in less than a month.

6 Now, of course Goel did not want to get caught, so he  
7 carefully avoided sharing his tips in writing or even by phone.  
8 Goel even once used a code to hint at what's going on without  
9 saying it outright, but for the most part, Goel just shared  
10 these tips in person when he met Niranjana, like when they met  
11 to play squash or to grab something to eat.

12 Eventually, Niranjana switched to a job in London.  
13 Goel could no longer meet with his friend, and the insider  
14 trading stopped. That's where things stood until 2021, when  
15 Goel asked to settle up to get his cut of the profits from the  
16 secret trading. At first, Niranjana hesitated because sending  
17 tens of thousands of dollars to Goel might attract attention.  
18 So Goel proposed that they use a cover story, say that the  
19 payment is just a loan. And with that, with the cover story in  
20 place, Niranjana sent \$85,000 straight into Goel's bank account.

21 Not long after that, the FBI showed up at Goel's front  
22 door asking questions about Niranjana, about trading. And  
23 during that interview, Goel admitted some unavoidable facts.  
24 He admitted that he knew Niranjana. He admitted he had received  
25 confidential memos at Goldman Sachs, and Goel admitted he was

N6C6GOE2

Opening - Thomas

1 not supposed to share what he learned at work with others.

2 But Goel also misled the FBI. He offered up the cover  
3 story about needing loans. He denied that he ever gave  
4 Niranjana any information from Goldman Sachs. Within days,  
5 however, Goel realized he might need more than a cover story.  
6 He needed a coverup. So Goel called Niranjana to arrange a  
7 meeting like old times. But this meeting, though, Goel didn't  
8 simply pick up the cell phone, call his friend, send him a text  
9 message. Instead, he went down to the gym in his apartment  
10 building and had an attendant call Niranjana, hoping to avoid a  
11 record of a call to the same person who had tipped him with  
12 inside information just days after the FBI had stopped by.

13 Now, by that time, Niranjana had moved back from London  
14 to New York. And they literally lived in the same apartment  
15 building, a high-rise just a few blocks this way. But the  
16 defendant didn't ask Niranjana to come over to his apartment.  
17 He didn't say, I'll come meet you at your place. He didn't say  
18 let's talk in the lobby. This time, now that the FBI was onto  
19 him, Goel arranged to meet Niranjana in the building's empty  
20 stairwell.

21 When they met in this stairwell, Goel decided the  
22 subject was so sensitive he had to whisper to his friend, even  
23 though there was no one around. And what the defendant  
24 whispered was they should delete any messages that would reveal  
25 what they had done.

N6C6GOE2

Opening - Thomas

1           They met again two weeks later, once more hiding in  
2 the stairwell. And at that meeting at the end, Goel told  
3 Niranjana that when he and Niranjana spoke about what happened to  
4 anyone, they had to be consistent. His words were, they must  
5 be the same from day one. There should not be a break in our  
6 story. The message was simple. We need to get our stories  
7 straight.

8           A few days later, they met yet again, a third time.  
9 And again, they met in a stairwell. And during that meeting,  
10 Goel and Niranjana clicked through messages on Niranjana's phone,  
11 identifying the ones that might reveal what they had done, and  
12 they deleted them.

13           Now, Goel's stairwell meetings, his hushed directions,  
14 the deletions from the phone, that might have worked, but what  
15 Goel didn't realize was that by the time of that third meeting,  
16 his friend Niranjana had decided to help the FBI. In fact,  
17 Niranjana had already met with the FBI, and Niranjana had already  
18 preserved the messages on his phone.

19           When Goel told him in the empty stairwell what to  
20 delete, Goel just revealed exactly which messages he most  
21 wanted to hide. And when Goel whispered in the stairwell to  
22 avoid anyone overhearing him, to avoid his words coming back to  
23 him in the future, all he did was make clear that he was  
24 destroying evidence. Because in the stairwell that day, Goel  
25 was being recorded.

N6C6GOE2

Opening - Thomas

1           At this trial, you will hear the defendant's whispers,  
2           you will hear when this man here tells his friend "delete." By  
3           the end of this trial, you will know why Goel tried to delete  
4           evidence that day because he engaged in a scheme to commit  
5           security fraud, and he didn't want to get caught.

6           We will prove all of this to you through a combination  
7           of witnesses, records, photographs, and recordings. For  
8           example, you'll hear from someone from Goldman who will explain  
9           investment banking and the importance and secrecy surrounding  
10          these deal memos. You'll hear someone who can explain how  
11          securities trades work and walk you through the accounts.  
12          You'll hear from the FBI agent who spoke to Goel, and you'll  
13          hear from Niranjana himself.

14          As you listen to that testimony, there are a few key  
15          pieces of evidence you may want to look out for.

16          First, you're going to see examples of the  
17          confidential deal memos that Goel received. You can see on  
18          yourself, they're stamped in big red letters "for internal use  
19          only."

20          Second, you're going to see messages between Goel and  
21          his friend Niranjana where Goel and Niranjana arranged to meet,  
22          including messages sent the same day or the day after Goel  
23          received the confidential deal memos.

24          Third, you're going to see stock trading records from  
25          the hidden account, the one that Niranjana controlled. Those

N6C6GOE2

Opening - Thomas

1 records will show stock option trades in the same companies  
2 discussed in the Goldman memos.

3 Fourth, you're going to see bank records that show a  
4 wire transfer from Goel's friend, Niranjana, to Goel in the  
5 amount of \$85,000.

6 The memos, the messages, the trading, and bank records  
7 will allow you to see that Goel received secret deal  
8 information, set up meetings with his friend, and shared in the  
9 profits of the trading. And as I said, you will hear directly  
10 from Niranjana himself.

11 Niranjana will tell you how Goel supplied him with  
12 trading tips, and he used those tips to trade in an account  
13 that he had hid in his brother's name. He will tell you that  
14 he and Goel traded a lot in securities from many companies, and  
15 Niranjana will tell you that for six of those trades, Goel's  
16 tips were so good, Niranjana asked if the tips were based on  
17 inside information from Goldman Sachs, and Goel denied it. But  
18 you'll hear that as Goel's tips about deal possibilities kept  
19 coming true, Niranjana concluded that he and Goel were not just  
20 trading in a secret account, they were trading on inside  
21 information.

22 Now, Niranjana will take the stand pursuant to an  
23 agreement that requires him to testify in order to avoid being  
24 prosecuted. And his testimony about his good friend will be  
25 personal. So listen carefully to it, scrutinize it, see how it

N6C6GOE2

Opening - Thomas

1 stacks up against the evidence.

2 I expect you will see that some trades he mentions,  
3 the same ones show up in the trade records. You will see the  
4 meetings that he referenced in the text messages. And you will  
5 hear that even though the defendant took great pains to hide  
6 and to whisper in the stairwell about deleting messages, some  
7 of what he said was captured on tape.

8 As all of that proof comes in, we ask that you just do  
9 three things:

10 First, pay close attention to the evidence.

11 Second, follow Judge Castel's instructions.

12 And third, use your common sense.

13 If you do those three simple things, you will find  
14 that Goel received inside information. You will find that Goel  
15 gave that information to his friend so they could place illegal  
16 stock trades. And you will find that when the FBI came  
17 knocking, Goel tried to cover up what he had done. That's why  
18 at the end of this trial, you will find the defendant  
19 Brijesh Goel is guilty as charged.

20 THE COURT: Thank you very much, Mr. Thomas.

21 Mr. Ford, you're going to deliver an opening  
22 statement?

23 MR. FORD: I am, your Honor.

24 THE COURT: All right. Whenever you're ready.

25 MR. FORD: May I proceed, your Honor?

N6C6GOE2

Opening - Ford

1 THE COURT: You may.

2 MR. FORD: Brijesh Goel was framed. He's been framed.  
3 Brijesh Goel should not be sitting at that table right now.  
4 Someone else should be. Here's what I mean:

5 This is a case about disloyalty and deception. You  
6 heard that one friend turned on another. I'm not talking about  
7 the type of disloyalty where two people do something wrong and  
8 a friend turns on the other. That's not the disloyalty I'm  
9 talking about. I'm talking about the type where one person,  
10 Akshay Niranjana, does something wrong and tries to pin it on  
11 his friend, Brijesh Goel, who, in fact, did not commit any  
12 crime. That is the ultimate betrayal. And that, ladies and  
13 gentlemen, is what this case is actually about, and for that  
14 reason, at the end, we're going to ask that you acquit  
15 Brijesh Goel.

16 Before I go any further, let me just quickly introduce  
17 myself. You heard my name. I'm Adam Ford. It's an honor to  
18 represent Mr. Goel. I'm here with my colleague, Reed Brodsky,  
19 Anjula Prasad, and Nicolette Beuther.

20 The evidence in this trial is going to show that  
21 Niranjana has fabricated this story that you just heard. And he  
22 fabricated it in exchange for him not to be prosecuted himself.  
23 And he fabricated it in exchange for him not to be deported,  
24 which was his biggest fear. Had he not done that, he would  
25 have been charged, and if convicted, faced lying to the SEC,

N6C6GOE2

Opening - Ford

1 insider trading, his own obstruction of justice, but he made a  
2 deal.

3 You did hear the government tell you about  
4 Akshay Niranjana. He'd be the witness. What they didn't tell  
5 you is he's pretty much the only witness. The government might  
6 call some other witnesses from Goldman Sachs, but they weren't  
7 there. They don't know about the facts at issue. They'll give  
8 some background facts, most of which we'll probably agree with.  
9 And they are going to ask you to convict Brijesh on the words  
10 of this one man.

11 We believe that at the end of this trial, you don't  
12 have to believe it now, but by the end when you've heard the  
13 evidence, you are going to conclude that this one and only  
14 witness is just not reliable.

15 Indeed, the government's theory of the case, the one  
16 that Niranjana has told them, it's riddled with flaws. And it  
17 might take us a little bit of time to unravel each of them.  
18 Bear with us. Give us the time. Stay with us. Because we're  
19 going to march through this over the next week, and we're going  
20 to get to the truth.

21 Now, as I understand the government's opening and what  
22 Mr. Niranjana is expected to testify to, he's going to come here  
23 and he's going to say, I didn't want to receive any secret  
24 inside information from my friend, Brijesh. I didn't know I  
25 was receiving any inside information. I kept asking him, are

N6C6GOE2

Opening - Ford

1 you sure this isn't inside information from Goldman Sachs? And  
2 Brijesh would assure him, it's not inside information.

3 He would have you believe, Mr. Niranjana, that he is a  
4 rather gullible, unlucky, lots of words, to have a friend  
5 having tricked him into engaging in an inside trading scheme  
6 upon repeated requests to confirm that he is not actually  
7 engaged in insider trading. This story, we submit, does not  
8 make sense. And the evidence is going to show that it's  
9 actually not what happened.

10 The government talked about this secret account. We  
11 talked a little bit more about it. It wasn't really a secret.  
12 It was a secret to Brijesh. He didn't know that Niranjana was  
13 trading out of his brother's account. Other people knew.  
14 Niranjana obviously knew, and Niranjana's brother obviously knew.  
15 Niranjana's family obviously knew. But Brijesh never had access  
16 to this account. Never saw it. Never had any idea what trades  
17 were being placed in it. And he most certainly never got any  
18 of the money from that account. That money went elsewhere, to  
19 Niranjana and his family.

20 Now, as the government mentioned, four years after the  
21 alleged inside trading scheme ended, everyone, the point of --  
22 the government will acknowledge 2018 it ends, and then they  
23 point to this \$85,000 payment. It was a loan. We're going to  
24 talk a little bit more about that, but it had no connection to  
25 these trading profits that Niranjana himself made from trading

N6C6GOE2

Opening - Ford

1 in his brother's account. And there's going to be evidence  
2 that's going to show this. So what we are in for? This next  
3 week is literally a once-in-a-blue-moon insider trading case.

4 We're going to have the person who traded, who kept  
5 all the money, who was in control of all the trades, come here  
6 and say he was tricked. And then we've got the insider who is  
7 accused of passing this information on, not having any idea  
8 about the trades or the money or the account.

9 Now, when Nirranjan comes in and takes the stand, he's  
10 going to sound polished. He might even sound convincing the  
11 first go-around. He's been practicing. He's got a script.  
12 He's been meeting with the government often to prepare, to tell  
13 you this story that he wants to convince you of.

14 What we'd ask is that you reserve judgment. Wait.  
15 Wait until we have a chance to question him on some of these  
16 points and pull back the facade. Other than Nirranjan's story  
17 that he's going to come and tell, there's practically no other  
18 evidence of this insider trading scheme.

19 The government claims that because the men were  
20 careful - but we're talking about what the government alleges  
21 to be a five-year insider trading conspiracy, during which time  
22 the only pieces of evidence that references this alleged  
23 insider trading scheme are three text messages, two of which  
24 are, did you book the court? And the other one, you alone?  
25 That is the evidence they are going to point to that these men

N6C6GOE2

Opening - Ford

1 were engaged in insider trading.

2 How about this one? Did you book the court? These  
3 men played squash together two, three, four times a week, all  
4 through the relevant time period, and were constantly texting  
5 each other. Did you book the court? Yes, I booked the court.  
6 The men were also close friends. And because of that,  
7 sometimes they had personal things to discuss. Not trading.  
8 Personal. And so they would each use, you alone? Nothing  
9 nefarious about that.

10 With respect to the obstruction of justice charge, the  
11 government opened on the scrolling of the phone, deleting  
12 evidence he's trying to hide. The evidence is actually going  
13 to show that there was no attempt to obstruct justice. There  
14 was no obstruction of justice.

15 Now, Brijesh did utter the words on the tapes, we  
16 should delete this, or delete, or words to that effect. The  
17 government is right about that. But they didn't tell you what  
18 he said moments later, which is, I've gotten a subpoena so I  
19 should not delete, let me ask my lawyer. And then they didn't  
20 say what he said right after that, which is, listen, don't  
21 delete this, let me check with my lawyer. And then they didn't  
22 say that it was Niranjan who was doing the deleting while he  
23 was cooperating with the government, while he was trying to get  
24 this non-prosecution agreement, while he was trying to  
25 implicate Brijesh in any crime.

N6C6GOE2

Opening - Ford

1           So at the end of this trial, we don't think the  
2 government is going to be able to meet their burden of proof on  
3 the obstruction of justice charge either.

4           Let me just take a step back and tell you a little bit  
5 more about Brijesh because it's really important to the story,  
6 and it's going to play into it.

7           Brijesh was born and raised in Haryana, India. He  
8 grew up in a modest family, but he worked really, really hard.  
9 And he eventually got into the Indian Institute of Technology,  
10 which is one of India's most prestigious universities. If you  
11 don't know much about, it's pretty much Harvard on steroids,  
12 trying to get into it. The only way to get in is through hard  
13 work, and he got in, and he graduated with honors. And  
14 afterwards, he came to the United States where he attended the  
15 University of California at Berkeley, where he graduated with a  
16 master's in finance in 2013.

17           Afterwards, he started working for Goldman Sachs –  
18 obviously, a well-known and prestigious financial institution  
19 here in the city. He worked there until 2021, during most of  
20 the time that's relevant here.

21           He left Goldman Sachs in the middle of 2021, and he  
22 started working at another well-known financial institution  
23 called Apollo, where he is still employed. He's on leave, but  
24 in both his places of work, he enjoyed a reputation of having  
25 honesty and integrity. And Apollo, to its credit, is taking a

N6C6GOE2

Opening - Ford

1 wait-and-see approach before deciding on any employment.

2 MR. THOMAS: Objection, your Honor.

3 THE COURT: Let me see you at sidebar, Mr. Ford.

4 (Continued on next page)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N6C6GOE2

Opening - Ford

1 (At the sidebar)

2 THE COURT: Let me have a proffer on how you intend to  
3 prove the defendant's reputation.

4 MR. FORD: We've listed a number of witnesses on our  
5 witness list that can act as character witnesses.

6 THE COURT: You intend to call character witnesses?

7 MR. FORD: Yeah.

8 THE COURT: Okay. And you intend to call the  
9 defendant, is that what you're telling the jury, with giving  
10 his background?

11 MR. FORD: We don't know yet.

12 THE COURT: Well, how are you getting his background  
13 in?

14 MR. FORD: I thought I was just doing a general  
15 background.

16 THE COURT: No, no, no, no. You have to have a  
17 good-faith belief it's going to be in the evidence. How is it  
18 going to be in the evidence?

19 MR. FORD: The government is attaching exhibits, his  
20 resume. All of this information is in the exhibits that we've  
21 talked about; where he worked, where he went to school.

22 THE COURT: So you expect that this evidence is going  
23 to be offered by the government; is that what your answer is?

24 MR. FORD: Yes.

25 THE COURT: I understand. That's why I'm asking the

N6C6GOE2

Opening - Ford

1 questions.

2 Any objection?

3 MR. THOMAS: Your Honor has asked him for his  
4 representation to Apollo, in particular, Apollo's wait-and-see  
5 approach and invoking Apollo's --

6 THE COURT: How are you going to get his reputation at  
7 Apollo?

8 MR. FORD: We have someone on our witness list who  
9 works within Apollo.

10 THE COURT: How would that be admissible evidence, his  
11 reputation at Apollo?

12 MR. FORD: His reputation -- I'm not certain, your  
13 Honor. His reputation within his community for where he works.

14 THE COURT: Well, that would be the reputation in the  
15 community, and your position is that would include his  
16 reputation at Apollo?

17 MR. FORD: Yes.

18 THE COURT: Okay. And reputation for what?

19 MR. FORD: For honesty and integrity.

20 THE COURT: Because I wasn't sure what you meant by  
21 reputation.

22 Okay. Anything else?

23 MR. THOMAS: Your Honor, I heard Mr. Ford at the end  
24 ascribe assessments to Apollo as an entity. I don't think any  
25 representative could speak on behalf of Apollo. That's what

N6C6GOE2

Opening - Ford

1 ultimately --

2 MR. FORD: Apollo --

3 THE COURT: Somebody is going to testify from Apollo  
4 that he's on a leave of absence?

5 MR. FORD: Well, no. But he is on a leave of absence.  
6 He's on -- I have a good-faith basis to say I know that --

7 THE COURT: But have --

8 MR. FORD: -- paid leave.

9 THE COURT: But there are a lot of things that you may  
10 know to be true, but the question is, will they be of evidence?

11 MR. FORD: I'm happy to --

12 (Defense counsel confer)

13 MR. FORD: Yeah. The person that we have on our list,  
14 who I just met with this week, is working at Apollo and is  
15 familiar with everything --

16 THE COURT: He knows that he's on a leave of absence.  
17 I have that. But how are you going to get that into evidence?  
18 How would that be relevant, admissible evidence?

19 MR. FORD: Well, it's relevant, part of his character.  
20 It's part of his character.

21 THE COURT: That he's on a leave of absence. I don't  
22 think so. I don't get that. I don't see how when you say,  
23 tell me his employment status at Apollo, and there's an  
24 objection raised, why wouldn't that objection be sustained?

25 MR. FORD: Well, I -- my -- I don't want to just keep

N6C6GOE2

Opening - Ford

1 repeating myself. I thought I was completely in bounds. I  
2 wasn't trying to push the limits.

3 THE COURT: I'm not accusing you of misconduct. I'm  
4 ruling on objections to an opening statement.

5 MR. FORD: Yeah, in my argument is that we have  
6 someone from Apollo who is able to testify as to his honesty  
7 and integrity and able to testify as to the fact that he's on  
8 leave. And Apollo was not --

9 THE COURT: I know he's able to. That's not the  
10 point. I accept that he's able to. That isn't what I'm asking  
11 you. He may know a lot of things. He may know about the  
12 defendant's wife, his background, his kids, his parents. He  
13 may know many, many things that he won't be able to testify to.  
14 I'm asking you, why would it be relevant and admissible that  
15 Apollo has him on a leave of absence?

16 MR. FORD: I think it's relevant and admissible, your  
17 Honor, because he has such a good reputation at Apollo that  
18 they have not -- they're just taking a wait-and-see approach.  
19 They don't know what to do here.

20 MR. BRODSKY: Your Honor, I'm just going to add since  
21 the government was putting in his resume, which included  
22 Apollo, and included "through the present," it's fair for us to  
23 argue that that's in evidence and that he hasn't been fired.

24 THE COURT: Okay. All right. Continue.

25 (Continued on next page)

N6C6GOE2

Opening - Ford

1 (In open court)

2 THE COURT: Please, whenever you're ready.

3 MR. FORD: Thank you, your Honor. Thank you,  
4 everyone.

5 Brijesh was married in 2014 to his girlfriend,  
6 Natasha Garg. Natasha is a doctor, worked at Mount Sinai, and  
7 now at Jamaica. She, unfortunately, is not present in the --

8 MR. NAFTALIS: Objection.

9 THE COURT: Let me see Mr. Ford at the sidebar,  
10 please.

11 (Continued on next page)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

N6C6GOE2

Opening - Ford

1 (At the sidebar)

2 THE COURT: The objection, please, sir.

3 MR. NAFTALIS: Your Honor, the personal circumstances  
4 of the defendant are irrelevant. It's not clear how they're  
5 coming in because they have not committed to the defendant  
6 testifying, and they are trying to curry favor with the jury up  
7 front.

8 THE COURT: Well, let's say the defendant was  
9 testifying, and the defendant said I'm now going to tell you  
10 about my wife. Would that be admissible?

11 MR. NAFTALIS: No.

12 THE COURT: So it really doesn't turn on whether he  
13 testifies or not. Go ahead. What's the basis for getting into  
14 evidence?

15 MR. FORD: Again, we thought they were just doing  
16 basic background stuff, but his wife --

17 THE COURT: I don't understand what that means. What  
18 you open on is admissible evidence.

19 MR. FORD: Yes, and --

20 THE COURT: And you think his marital status and what  
21 his wife does for a living is admissible evidence?

22 MR. FORD: Well, I think it's part of the story  
23 because it goes to the two of them buy a house upstate, and the  
24 wife and Niranjana's wife are good friends, and his wife is an  
25 integral participant of the story because it's a group of them

N6C6GOE2

Opening - Ford

1 and his wife is not --

2 THE COURT: You're here because of her employment  
3 history specifically.

4 MR. FORD: Oh, that was -- because I said she worked  
5 at a hospital?

6 MR. THOMAS: I think Mr. Ford was about to tell the  
7 jury that his wife is unable to be here today because she has a  
8 pending visa overseas.

9 THE COURT: Is that what you're planning on going?  
10 Because I think you said the word "unable," didn't you?

11 No, no, no. Answer me, Mr. Ford.

12 MR. FORD: Yes.

13 THE COURT: You said the word "unable."

14 MR. FORD: Yes. We were going to explain that she's  
15 unable to be here.

16 THE COURT: How is that relevant, admissible evidence,  
17 sir?

18 MR. FORD: Well, to the extent that -- Judge, the  
19 answer is, to the extent that the jury can draw a negative  
20 inference because the government plans on talking about the  
21 defendant's extramarital affairs, they've told us that, and  
22 they are going to pull that out in their evidence, and so we  
23 need to be able to respond as to why his wife is not here, and  
24 it doesn't have anything to do with what their allegations are.

25 THE COURT: How would you prove that?

N6C6GOE2

Opening - Ford

1 MR. FORD: How would I prove?

2 THE COURT: What you just said you were going to  
3 prove?

4 MR. FORD: Why she can't get in?

5 THE COURT: Yes.

6 MR. FORD: If my client testifies, that would be one  
7 way it could come in.

8 THE COURT: That's why I'm asking. I've asked you  
9 this already.

10 MR. FORD: I'm not -- obviously, I can't commit to  
11 having my client testify.

12 THE COURT: I understand that. So how are you going  
13 to get it into evidence?

14 MR. FORD: One of the other witnesses who we've named  
15 also knows about the friend group and the relationship, and  
16 they talked about it, and indeed Mr. Niranjan would also talk  
17 about it, and we'd get him to admit to these facts as well.

18 THE COURT: But the wife's immigration status, how is  
19 that probative of anything?

20 MR. FORD: It's probative if the government --

21 (Defendant counsel confer)

22 MR. FORD: I'll withdraw.

23 THE COURT: Thank you very much. Let's move on.

24 (Continued on next page)

25

N6CQgoe3

Opening - Mr. Ford

1 (In open court)

2 MR. FORD: May I continue, your Honor?

3 THE COURT: You may.

4 MR. FORD: Let's talk about Akshay Niranjana, the  
5 government's sole cooperating witness.

6 You are going to hear a lot that Akshay Niranjana and  
7 Brijesh Goel were very close friends during the relevant time  
8 period. Niranjana referred to Brijesh as like an elder brother,  
9 and I think that was an apt description.

10 They first met at the University of California  
11 Berkeley, although they weren't particularly -- they didn't  
12 become friends at that time, but they both wound up in New York  
13 City several years later, and they became quite close. In  
14 fact, on two occasions Niranjana follows Brijesh into the same  
15 apartment building, to move in the same apartment building,  
16 including with their girlfriends, and then later wives.

17 Notwithstanding this friendship, which I think was  
18 true, Niranjana had a festering, deep-seated jealousy over  
19 Brijesh. He would frequently comment about Brijesh being more  
20 successful, making more money, and the evidence is going to  
21 show that this jealousy ultimately contributed to Niranjana's  
22 betrayal.

23 Now, Niranjana as a witness, he has done a lot of --  
24 strike that. Niranjana has done a lot of things wrong. He has  
25 lied to the government in connection with the SEC, and the SEC

N6CQgoe3

Opening - Mr. Ford

1 in connection with this investigation. Now he's going to come  
2 up here and he's going to try and tell you, look, yes, I lied a  
3 lot before. I lied a lot. But now I'm telling you the truth.  
4 And he's going to ask you to believe that he was only lying  
5 before; not lying now. But we think the evidence is going to  
6 show that he's lying now.

7 And one of the things you all are free to consider,  
8 and you should consider, is that Niranjana is coming here and  
9 testifying under a non-prosecution agreement. Now the  
10 government mentioned it, but let me talk a little bit more  
11 about it.

12 This means that he will never be charged for any of  
13 the crimes that he committed, and, in exchange, he comes in and  
14 gives his testimony, but -- and in addition to not being  
15 prosecuted, he won't be deported. And so he made a trade,  
16 which was protecting himself coming in and telling you the  
17 story that he's going to tell, and you are all free to consider  
18 that when weighing his credibility and his bias as a witness.

19 Now, you might be thinking, okay, even if the  
20 government's only witness, contemporary factual witness has  
21 bias, has motive to lie, is untrustworthy, what will the  
22 evidence show about the other investigation, you know, the rest  
23 of the investigation the government did before indicting  
24 Brijesh. And I wish the answer were different, but the truth  
25 is that the government relied extensively on Niranjana's story

N6CQgoe3

Opening - Mr. Ford

1 in deciding to indict Brijesh. They did not go and collect all  
2 of the records that were available, and they indicted him --  
3 they indicted Brijesh only six weeks after Niranjana first comes  
4 into the office. That is a very fast time. So the  
5 investigation that they did prior to this indictment was not as  
6 fulsome as it could have been.

7 Let me talk a little bit about the allegations. This  
8 case really comes down to allegations that there were six tips  
9 passed between February 2017 and the middle of '18. And let's  
10 talk a little bit about that.

11 First off, obviously, when people work in jobs that  
12 they come in contact with confidential material nonpublic  
13 information or other privileged communications, a lot of people  
14 receive it: Doctors, lawyers, bankers, accountants. People  
15 know that at your job and in connection with your work, you  
16 receive confidential information, but sometimes that  
17 information becomes public. Lawyers certainly see this all the  
18 time. We work on something, and then there's a public filing,  
19 and you're free to talk with your friends and family about the  
20 public filing. So you are going to see text messages where  
21 Brijesh is texting public news articles on deals that he worked  
22 on, particularly when he was winning awards for his excellence  
23 in his job. And so we're going to see that. And he was doing,  
24 frankly, what I assume most people do when talking about their  
25 work is that they can talk about what's public, but not what's

N6CQgoe3

Opening - Mr. Ford

1 confidential, which brings me to this -- the Goldman Sachs  
2 memos, the confidential memos.

3 He was on an email distribution list with a somewhat  
4 large group of people at Goldman Sachs, and he would receive  
5 these memos: FWCC, CMCC. It doesn't matter if you remember  
6 the acronym. He got these memos. They contain confidential  
7 information. They will contain material nonpublic information.  
8 I don't know all of them, but they were confidential, but  
9 Brijesh knew everything in all of those memos was confidential  
10 and can't be shared outside of Goldman Sachs. It's not in  
11 dispute. He knows that. Of course it's confidential. He knew  
12 he couldn't share it.

13 Now, Niranjan is going to come in, and he's going to  
14 tell you a story about what he claims Brijesh told him about  
15 these memos; and if he says what he said in the past, he's  
16 going to get it very wrong, and this is going to be something  
17 for you to consider and weigh.

18 Now, will you have reasonable doubt as to this core of  
19 the case, the seven -- the six ticker symbols. At the end of  
20 this trial, I think there is going to be a lot of evidence to  
21 give you that reasonable doubt. Let me just talk about three  
22 of them.

23 First, there were six trades, only two of which made  
24 money. The other four lost money. That can give you a little  
25 bit of pause. Maybe that doesn't decide it for you, but two

N6CQgoe3

Opening - Mr. Ford

1 people, two highly sophisticated individuals are engaged in  
2 insider trading, and we pause on why only two of the six  
3 trades, seven actually, were successful. Brijesh never  
4 receives any of the money. I mentioned this, but it bears  
5 repeating. He doesn't receive any of the money at the time or  
6 later. We'll talk about the loan. And yet Niranjana's family  
7 gets a lot of the money. His younger brother gets some of it.  
8 His father gets some of it. Niranjana has said that he has  
9 given all of them -- either gave the money away to family  
10 members or lost it in other legal trades unconnected to  
11 Brijesh. That's the second reason.

12 The third is that Niranjana can't even keep his story  
13 straight with respect to these tips. The first alleged tip was  
14 a company called Lumos. This was the first time that there was  
15 supposedly this passing of inside information. When Niranjana  
16 spoke with the government, not on one occasion, but on two  
17 separate occasions, he says unequivocally Lumos is not from  
18 Goel. He tells the government that twice. It's only much  
19 later that he just remembers the first time he started in  
20 insider trading he could remember that Lumos was from Goel. He  
21 changes his story on that. He changes his story with respect  
22 to just about all of the other tips as well.

23 He says two of them happened when they were in a  
24 swimming pool. Then he comes back and says never mind;  
25 they weren't in a swimming pool. They were out on a street

N6CQgoe3

Opening - Mr. Ford

1 corner. And then he says, no, it was not a street corner  
2 either. It happens in a diner.

3 So you would think that if in fact Niranjan was in an  
4 inside trading scheme with Brijesh that makes them net  
5 \$240,000, that results in \$240,000 in profit, that he'd be able  
6 to remember this. I mean, people, you know the way memory  
7 works: You remember things that -- big events in your life.  
8 But he doesn't. He keeps changing his story, and we'll see  
9 what story he tells on the stand.

10 Now, Niranjan has said, and we expect him to repeat,  
11 that this inside trading scheme ends in 2018, the middle of  
12 2018, pretty much when he moves to London. He moves to London  
13 for about a year. So you might be thinking tell me how much  
14 money, what is the evidence going to show about how much money  
15 Brijesh receives. And the answer is zero. He does not receive  
16 any of the money from these trades.

17 By the middle of 2018, there's \$240,000 of profit net  
18 from these alleged trades. What that means -- and I want you  
19 to keep this in mind for a little bit -- is that if we are to  
20 believe Niranjan's story, by this time, the middle of 2018,  
21 Brijesh is owed \$120,000, that would be 50/50, which he says  
22 was the agreement. So let's keep that in mind because the  
23 government said the eventual loan that is said to take place  
24 two years later is about for \$75,000, there is no way to  
25 reconcile these two numbers.

N6CQgoe3

Opening - Mr. Ford

1 Now, after Niranjana moves back to New York in 2019, I  
2 should say there's a period of time where there's sort of  
3 nothing happening, just life. There's no allegations of any  
4 wrongdoing. The men remain friends. They travel together  
5 throughout Europe. There's bachelor parties. Their wives and  
6 their group and everyone is getting together, and there's sort  
7 of nothing happening.

8 However, in 2020 in connection, frankly with the  
9 pandemic, the two men actually do have conversation. They do  
10 actually agree to engage in trading together. This is legal  
11 trading, lawful trading in big ticker stocks: Lyft, Uber,  
12 Moderna. No one is going to suggest that there was anything  
13 illegal or unlawful about this arrangement between Brijesh and  
14 Akshay. They were friends and they decided to do this.

15 Now, here is the thing. In fairness, while certainly  
16 not illegal at all, Brijesh trading in single stocks while he  
17 was employed with Goldman Sachs was a violation of Goldman  
18 Sachs policy. And he did it. And he engaged in conduct that  
19 violated Goldman Sachs policies. But not for very long, just  
20 for three months. It started in about October of 2020. There  
21 were some trades in November 2020, December, and then just a  
22 little bit in January.

23 And what's so critical about this part of the story is  
24 that when he starts trading, this legal trading in 2020 with  
25 Niranjana, he sends Niranjana \$12,000 so that Niranjana can put

N6CQgoe3

Opening - Mr. Ford

1 some of these trades on Lyft, Moderna. Let me say that again.  
2 Brijesh sends Niranjana \$12,000 so that Niranjana can put these  
3 trades on. Now remember, as of the middle of 2018, Niranjana  
4 owed Brijesh, if we believe Niranjana, \$120,000. If we believe  
5 Niranjana, they did an inside trading scheme, and each man gets  
6 \$120,000. Brijesh never gets any money. And then, what is it,  
7 two years later Brijesh is sending the money to Niranjana. Now  
8 I guess he's owed \$132,000 if we believe Niranjana. We would  
9 submit that the fact that Niranjana is accepting this money  
10 suggest that his story is not accurate. In fact, we think the  
11 evidence is going to show that this \$12,000 payment is evidence  
12 that Brijesh didn't understand at the time that there was  
13 \$120,000 in trading profits or any money in trading profits in  
14 this account.

15 So let's talk about 2021. As I said, this legal  
16 trading lasted two months. And what happens in January 2021  
17 Brijesh realize is I'm sort of doing this trading with  
18 Niranjana, it's not big ticket stuff, the total profits are  
19 several thousand dollars, but he realizes it is a violation.  
20 He doesn't feel right about it, and so he exits this sort of  
21 understanding. And by the end of January he says, I'm out, and  
22 there is evidence and there's text messages to show that as of  
23 the end of January, middle, he's completely out of all trading  
24 understandings with Niranjana. So at this point, Niranjana --  
25 I'm sorry, and what he says was when he's ending it is, you

N6CQgoe3

Opening - Mr. Ford

1 know, I shouldn't, you know, the trading, I sort of don't want  
2 any profits from it. Let's just treat the \$12,000 as a loan.  
3 So that's sort of the understanding as we go into 2021, is that  
4 actually Niranjana just owes Brijesh the \$12,000.

5 A few months later, as I mentioned, Brijesh leaves  
6 Goldman Sachs, moves to another financial institution, and he  
7 becomes extremely busy and starts seeing less of Niranjana.  
8 Also by the summer, Niranjana's life comes to be a bit  
9 disordered. He separates from his wife. He actually moves in  
10 with Brijesh and Natasha, is sleeping on their couch during his  
11 separation. He starts hanging out with people who are sort of  
12 not a great influence. He starts doing a lot of illicit drugs.  
13 And in fact he winds up doing so much at a certain point he  
14 winds up getting diagnosed with something called cannabis use  
15 disorder and that sort of exacerbates another mental disorder  
16 that he has that could impair cognitive function and memory.

17 Brijesh asks for his \$12,000 back in the middle of  
18 2021. The men meet, and there is a discussion about a  
19 repayment of the money, of the loan, and then Brijesh also asks  
20 for a loan because they bought a house Upstate. Brijesh and  
21 Natasha bought a house Upstate and sort of overextended  
22 themselves. Now Niranjana doesn't know this, but Brijesh also  
23 took out loans from other people, one other friend and a  
24 commercial lender during this time because he needed a loan.

25 So he winds up receiving what's effectively \$85,000 in

N6CQgoe3

Opening - Mr. Ford

1 the summer of 2021. \$12,000 was to repay the amount that he  
2 had given him in the trading, and then \$73,000 was the loan.  
3 That's the \$85,000. Now, again, this 85,000 doesn't connect  
4 with any of the trading records and was just a loan. There's  
5 nothing nefarious about it.

6 Let me talk about the recordings. You're going to  
7 hear recordings in this case. There were two. Niranjana, while  
8 he was attempting to cooperate, cooperating, he made two  
9 recordings: One on June 5, one on June 10. The one on June 5  
10 he stops halfway through. So only half the conversation is  
11 recorded. The one on June 10 is about 45 minutes long. Both  
12 of them are very, very hard to hear. I understand that we are  
13 going to try and get you headphones to help. But they're going  
14 to be hard to hear. They're also half in Hindi, but we are  
15 going to try to listen to them, and I want you to listen to  
16 them. The government is going to just play parts of them for  
17 you, snippets. We think that you should again sort of reserve  
18 judgment until you can hear the full context of these  
19 recordings because in context, and if you listen to them, these  
20 recordings are great for Brijesh. They prove, they're evidence  
21 of his side of the story. So we would ask with these  
22 recordings that you really listen to them.

23 Let me end on a final note. I get it's late, after  
24 5:00. I apologize for that, but this is important.

25 I was trying to put myself in your shoes. Trying to

N6CQgoe3

1 think about how difficult it is for you, sitting there when you  
2 get your jury duty notice. You sit here all day. It's 4:00  
3 and now you have to hear two competing stories of, frankly,  
4 dense, opaque material and to try and make sense of it. And I  
5 was thinking of how do we sort of think about this, and let you  
6 know that we are going to get through it, and we are going to  
7 get through it.

8 It happened to be last week when we had the wild fires  
9 up in Canada. And I'm sure everyone remembers the sky down  
10 here was hazy and gray, and one day it was sort of that freaky  
11 burnt orange. You couldn't see anything. That might be how  
12 we're all feeling right now in terms of trying to figure out  
13 what's going on here.

14 But like last week where we sat, we waited, took about  
15 a week, right? And then all of a sudden, we got back to our  
16 nice New York City blue skies. It's the same thing here. Give  
17 us about a week. Everything might seem complicated and opaque,  
18 but I can guarantee you in a week, the evidence is going to be  
19 out. Things are going to be clear. The skies are going to be  
20 blue again, and when they are, we hope that you all vote to  
21 acquit Brijesh Goel. Thank you.

22 THE COURT: Thank you, Mr. Ford.

23 Ladies and gentlemen of the jury, it's been a long  
24 day. I want you to go home, put the case out of your mind.  
25 Remember that you are not to discuss it with anyone, not to do

N6CQgoe3

1 any research of any kind, and we will be back tomorrow morning.

2 Now for tomorrow morning, what you want and I want is  
3 getting a 10:00 sharp start with the testimony. In order to  
4 have a 10:00 start, you really have to be at the courthouse 20  
5 to 10:00, quarter to 10:00 to go through security. Otherwise  
6 we can't have that 10:00 start.

7 And if we can get a full trial day in, that means that  
8 we are that much further through the case. This case is going  
9 to be tried fairly and the parties are going to have the  
10 opportunity to put on the evidence they want. But to get that  
11 done efficiently and get you back to your regular lives, a full  
12 day would be appropriate.

13 So have a very pleasant evening. Do not discuss the  
14 case among yourselves or with anyone. I will have some  
15 preliminary instructions for you tomorrow morning.

16 Good night, ladies and gentlemen. Please stand for  
17 the jury.

18 Please exit through the jury room. Thank you.

19 (Jury not present)

20 THE COURT: Please be seated. Tomorrow morning what I  
21 propose to do is deliver the standard preliminary instructions  
22 to the jury on such things on what is and is not evidence, the  
23 presumption of innocence, the government's burden and  
24 credibility of witnesses. And I thought it was appropriate to  
25 add the following instruction:

N6CQgoe3

1 Ladies and gentlemen, there is no legal requirement  
2 that law enforcement agents investigate crimes in a particular  
3 way or that the government prove its case through any  
4 particular means. While you are to carefully consider the  
5 evidence introduced by the evidence, you are not to speculate  
6 as to why the government used the techniques they did or why  
7 they did not use other techniques. The government is not on  
8 trial. Law enforcement techniques are not your concern. Your  
9 concern is to determine whether on the evidence, or lack of  
10 evidence, the defendant's guilt has been proven beyond a  
11 reasonable doubt.

12 Any objection from the government?

13 MR. THOMAS: No, your Honor. That sounds like an  
14 accurate recitation of the law.

15 THE COURT: Any objection from the defendant?

16 MR. FORD: No, your Honor.

17 THE COURT: Thank you all very much. Have a very  
18 pleasant evening. And I'll see you all tomorrow morning.  
19 Thank you.

20 (Adjourned to June 13, 2023, at 10:00 a.m.)

21 \* \* \*